

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17753
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 15, 2003, the staff of the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner), proposing income tax, penalty, and interest for the years 1995, 1996, 1997, 1998, 1999, 2000, and 2001 in the total amount of \$114,373.

On November 17, 2003, the Commission received the petitioner's appeal and petition for redetermination. A hearing has not been requested by the petitioner. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioner failed to file her 1995, 1996, 1997, 1998, 1999, 2000, and 2001 individual income tax returns. When a Commission employee asked her about her residency, she stated she had lived in Idaho for eight years. When asked about her individual income tax returns, she stated they are with her accountant.

The TDB sent the petitioner a letter on March 12, 2003, notifying her of the missing returns.

After not receiving a response to the initial letter, the bureau requested income information [Redacted]. Since the information [Redacted] did not provide sufficient income information, the bureau used the petitioner's 2001 sales and use tax report to issue the NOD.

During a phone conversation on October 1, 2003, the petitioner told a Commission employee in the TDB that she was married from 1993 to 2002 and her husband was an

[Redacted] resident that filed his income tax returns with a filing status of “married filing separate.” The petitioner also stated that prior to 2000 she lived in the states of [Redacted]. The Commission employee advised her to provide a narrative of where she lived and worked during those years.

On November 5, 2003, the petitioner signed a Power Of Attorney (POA) appointing [Redacted] as her attorney-in-fact.

In the petitioner’s protest letter received November 17, 2003, she stated that her accounts were with a bookkeeper/accountant, and she provided a revised record of her employment.

The Commission’s Tax Enforcement Specialist (specialist) sent the petitioner’s representative a letter on November 19, 2003, acknowledging that a timely petition for redetermination of the NOD had been filed. In the letter the specialist also informed the petitioner’s representative that the petitioner’s file would be retained in the TDB awaiting the receipt of the petitioner’s 1995 through 2001 Idaho individual income tax returns.

The specialist sent another letter to the petitioner’s representative on December 19, 2003, that requested the petitioner’s delinquent returns be filed.

On March 22, 2004, the petitioner’s attorney-in-fact faxed a memo to the Commission withdrawing her POA for the petitioner for the years 1995 through 2001.

On March 23, 2004, the Commission’s Tax Enforcement Supervisor (supervisor) sent a letter to the petitioner stating that he would like to work with her directly to resolve the pending issues.

Also in his letter, the supervisor stated that, during the petitioner’s conversation with a Commission employee in the [Redacted], the petitioner indicated that she might have lived in Idaho prior to 2000.

A residency questionnaire was enclosed with the letter that would allow TDB to gain a better understanding of the petitioner's residency history. The supervisor requested that the petitioner complete this questionnaire and return it no later than April 5, 2004. Copies of the petitioner's completed or partially completed 2000-2003 Idaho income tax returns were also requested. The supervisor then informed the petitioner that should no information be received from her by that date, her file would be transferred to the Commission's legal department for further consideration.

In the petitioner's letter received April 14, 2004 she stated that she would pick up the "bookwork and business papers" from her accountant the next day and send them to the Tax Commission.

The petitioner also submitted the Residency/Domicile Questionnaire but only for the tax years 2000 through 2003. The questionnaire should have been completed for all years included in the NOD, 1995 through 2001. Under the last known address, the petitioner listed [Redacted] from 1998 on and off until November 2000.

The petitioner stated she had never filed a return with the state of Idaho and she was not employed until November 2000. Idaho is a community property state and, as a resident of Idaho, half of petitioner's husband's income is her income even if he lived and worked in another state.

The information in the Residency/Domicile Questionnaire completed by the petitioner did not show that the petitioner was a resident and domiciled in another state for the years 1995 through 2001.

The Commission sent the petitioner a hearing rights letter on September 30, 2004, giving her two options for having the Notice of Deficiency Determination redetermined. The petitioner did not respond to the Commission's letter so a follow-up letter was sent to the petitioner on

November 17, 2004. The petitioner also failed to respond to the follow-up letter. Therefore, the Tax Commission decided the matter based upon the information currently available.

The petitioner is a self-employed individual whose business is a bar and pizza parlor in [Redacted], Idaho. The petitioner filed monthly sales tax reports with the Tax Commission. The Bureau prepared returns for the petitioner using the information the petitioner filed on her sales tax returns. The sales the petitioner reported were identified as gross income to the petitioner. Deductions from gross income are a matter of legislative grace and petitioners must be able to show they fall within the terms of the deduction. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S.Ct. 788, (1934). The petitioner has provided no information to show that there were any allowable deductions from her gross income.

Since the petitioner has not provided anything to show that the returns the Bureau prepared were in error, she has not met her burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Therefore, the Tax Commission upholds the Bureau's computation of the petitioner's tax.

The Bureau added interest and penalty to the petitioner's Idaho tax deficiency. The Tax Commission reviewed those additions and found both to be appropriate per Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated September 15, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$10,463	\$ 2,616	\$ 7,061	\$ 20,140
1996	10,451	2,613	6,187	19,251
1997	10,430	2,608	5,264	18,302
1998	10,418	2,605	4,453	17,476
1999	10,410	2,603	3,693	16,706
2000	10,262	2,566	2,819	15,647
2001	9,839	2,460	1,945	<u>14,244</u>
			TOTAL DUE	<u>\$121,766</u>

Interest is calculated through August 17, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[Redacted]  
[Redacted]

Receipt No.